



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 9, 1996

Ms. Inez Vanderburg
Attorney, Legal Services
Texas Department of Mental Health
and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR96-0161

Dear Ms. Vanderburg:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36896.

The Texas Department of Mental Health and Mental Retardation ("TDMHMR") has received a request for a sample copy of a contract involving electroconvulsive therapy ("ECT"), as well as other information relating to ECT.¹ TDMHMR is concerned that certain information in the contract is confidential by law and is excepted from required public disclosure under section 552.101 of the Government Code. You have submitted a copy of the contract for our consideration.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Sections 578.006 and 578.007 of the Health and Safety Code require mental hospitals and facilities that administer ECT to register ECT equipment with TDMHMR and to submit quarterly reports to TDMHMR. Section 578.008 requires TDMHMR to file an annual report with the governor and the legislature

summarizing by facility the information received under Sections 578.006 and 578.007. If the therapy is administered by a private

¹In a subsequent letter to our office, you state that you have reached an agreement with the requester regarding the other information that was requested. Therefore, you state that you are only requesting an opinion regarding whether certain information on the contract is excepted from disclosure.

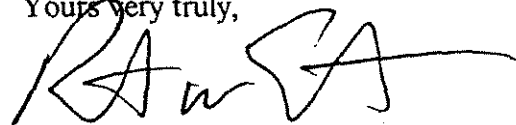
physician on an outpatient basis, the report must include that information but may not identify the physician. The department may not directly or indirectly identify in a report issued under this section a patient who received the therapy.

Health & Safety Code § 578.008(b). The language in section 578.008(b) providing that the report may not identify a patient who has received ECT or physician who has administered ECT on an outpatient basis on its face applies only to the TDMHMR report to the governor and the legislature and does not apply to the release of other information by TDMHMR. Therefore, this statute does not authorize you to withhold information that would reveal the identity of the physician on the contract that you submitted.

We note, however, that included among the attachments to the contract is a W-9 Internal Revenue Service tax form, titled "Request for Taxpayer Identification Number and Certification." Federal tax return information, including taxpayer identification numbers, are confidential under federal law. 26 U.S.C. § 6103(a). Therefore, the department must withhold this tax form. All other information within the contract must be released.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/ch

Ref.: ID# 36896

Enclosures: Marked documents

²The contract that you submitted does not include any patient names or other patient information. Therefore, statutes that make confidential certain patient information are not relevant regarding the release of this document. See e.g. Health & Safety Code §§ 611.002, .004. Additionally, you have not raised, nor are we aware of, any other statute or exception that would require you to withhold from disclosure the information at issue in the contract.

cc: Mr. Douglas G. Cameron
Executive Director
World Association of Electroshock Survivors
P.O. Box 343
San Marcos, Texas 78667
(w/o enclosures)